

1  
2  
3  
4  
5  
6  
7  
8           UNITED STATES DISTRICT COURT  
9           WESTERN DISTRICT OF WASHINGTON  
10           AT TACOMA  
11

12           SEAN D. MOON,

13           Plaintiff,

14           v.

15           CAROLYN W. COLVIN, Commissioner  
16           of Social Security,

17           Defendant.

18           CASE NO. C11-5230 RJB-KLS

19           ORDER ON REPORT AND  
20           RECOMMENDATION GRANTING  
21           IN PART PLAINTIFF'S MOTION  
22           FOR ATTORNEY'S FEES, COST,  
23           AND EXPENSES PURSUANT TO 28  
24           U.S.C. § 2412

16           This matter comes before the court on the Report and Recommendation of Magistrate  
17           Judge Karen L. Strombom (Dkt. 34). The court has considered the relevant documents and the  
18           remainder of the file herein.

19           On February 14, 2014, Plaintiff filed this Motion for Attorney's Fees, Cost, and  
20           Expenses, arguing that Defendant's position was not substantially justified, that an award of  
21           attorney's fees would serve the purposes of the (EAJA), and that there are no special  
22           circumstances that render an award unjust. Dkt. 31. Plaintiff requested \$17,127.25 in attorney's  
23           fees, \$486.50 in costs, and \$163.24 in expenses. *Id.* at 1.

24           ORDER ON REPORT AND RECOMMENDATION  
25           GRANTING IN PART PLAINTIFF'S MOTION  
26           FOR ATTORNEY'S FEES, COST, AND  
27           EXPENSES PURSUANT TO 28 U.S.C. § 2412- 1

1 On March 3, 2014, Defendant responded that attorney's fees are not warranted, or in the  
 2 alternative, that the requested fees should be reduced to a reasonable amount. Dkt. 32.  
 3 Defendant proposed an approximately 60% reduction in hours. *Id.* at 11. Defendant had no  
 4 objection to the costs and expenses proposed by Plaintiff. *Id.*

5 On April 1, 2014, Magistrate Judge Strombom issued this Report and Recommendation,  
 6 recommending that the court grant in part Plaintiff's Motion for Attorney's Fees, Cost, and  
 7 Expenses Pursuant to 28 U.S.C. §2412 (Dkt. 31) to the extent that Plaintiff is entitled to  
 8 attorney fees of \$15,628.59, costs of \$486.50, and expenses of \$163.24. Dkt. 34 at 1. Judge  
 9 Strombom reasoned that the administrative record in this case was fairly lengthy and there is no  
 10 indication of bad faith by Plaintiff raising several issues on appeal. *Id.* at 4–12. However, Judge  
 11 Strombom also found that the number of hours that Plaintiff's counsel billed for the Ninth  
 12 Circuit brief was unreasonable (37.1 hours), based on the substantial similarity between that brief  
 13 and the pre-appeal briefing for the district court. *Id.* Accordingly, Judge Strombom reduced the  
 14 requested hours by 30%. *Id.* at 13. The parties were given fourteen days to provide their  
 15 objections.

16 On April 15, 2014, Plaintiff objected that Judge Strombom miscalculated the amount of  
 17 hours spent "drafting and editing the opening brief" to the Ninth Circuit because Plaintiff's  
 18 counsel spent only 22.2 hours, but Judge Strombom stated it took 37.1 hours. Dkt. 35. Plaintiff  
 19 did not object on any other grounds. *Id.*

20 On April 29, 2014, Defendant responded that the Magistrate Judge correctly reduced the  
 21 hours and that 30% of Plaintiff's time spent preparing Ninth Circuit briefs should be deducted.  
 22 Dkt. 36.

The court reviewed the record and it appears that Plaintiff only spent 22.2 hours on the opening brief. *See* Dkt. 31-3 at 2 (sum of 6.2 hours, 6.5 hours, and 9.5 hours). However, Judge Strombom also included the 16.9 hours spent by Plaintiff's counsel on the reply brief. *See id.* (sum of 7.1 hours and 9.8 hours); Dkt. 34 at 14 n.7. It appears that Judge Strombom intended to refer to the time spent preparing both the opening and reply as unreasonable (a total of 39.1 hours). Upon an independent review of the record, the time spent on both briefs respectively seems unreasonable given the substantial similarity to previously prepared briefing. Therefore, the court should grant Plaintiff's motion with the appropriate reduction of \$2,059.72 (11.1 hours), for a total of \$15,628.59 in attorney fees.

Accordingly, it is hereby **ORDERED** that:

1. Plaintiff's Motion for Attorney's Fees, Cost, and Expenses Pursuant to 28 U.S.C. §2412 (Dkt. 31) is **GRANTED**.
2. Plaintiff is **AWARDED** EAJA fees in the amount of \$15,628.59 in attorney fees, \$486.50 in costs, and \$163.24 in expenses, pursuant to 28 U.S.C. § 2412(d). If the Commissioner determines that the EAJA award is not subject to any offset under the Treasury Offset Program, as discussed in *Astrue v. Ratliff*, 560 U.S. 586 (2010), the check shall be made payable to Plaintiff's attorney, Eitan Kassel Yanich.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 29<sup>th</sup> day of April, 2014.

Robert Bryan

ROBERT J. BRYAN  
United States District Judge

**ORDER ON REPORT AND RECOMMENDATION  
GRANTING IN PART PLAINTIFF'S MOTION  
FOR ATTORNEY'S FEES, COST, AND  
EXPENSES PURSUANT TO 28 U.S.C. § 2412- 3**